

FILED

2012 SEP 26 PM 2:56
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

CP

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MADISON PARK ALTA LOMA,

Plaintiff,

v.

OMAR READER, et al.,

Defendants.

Case No. EDCV 12-1531-UA (DUTYx)

ORDER REMANDING CASE TO
SUPERIOR COURT OF CALIFORNIA

On August 16, 2012, Plaintiff Madison Park Alta Loma filed an unlawful detainer action against Defendants Omar Reader, Gonzella Reader, and Ibraheem Reader in San Bernardino County Superior Court.

On September 7, 2012, Defendants filed a Notice of Removal. Defendants allege jurisdiction pursuant to 28 U.S.C. § 1443(1). The Notice of Removal states that the Complaint presents a federal question such that the case could have originally been filed in this Court. (Notice of Removal at 1.)

When a notice of removal is filed, the court must examine it "promptly," and, "[i]f it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand." 28 U.S.C. §

1 1446(c)(4). For the reasons given below, the Court has determined that the case must be
2 remanded to state court.

3 Federal courts are courts of limited jurisdiction, and a "federal court is presumed to
4 lack jurisdiction in a particular case unless the contrary affirmatively appears." Stock W.,
5 Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989) (citations omitted). Courts
6 "strictly construe the removal statute against removal jurisdiction," and "the defendant
7 always has the burden of establishing that removal is proper." Gaus v. Miles, Inc., 980 F.2d
8 564, 566 (9th Cir. 1992). Furthermore, "jurisdiction must be rejected if there is any doubt as
9 to the right of removal in the first instance." Id. Removal is proper only if the court could
10 have exercised jurisdiction over the action had it originally been filed in federal court.
11 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). The "presence or absence of
12 federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides
13 that federal jurisdiction exists only when a federal question is presented on the face of the
14 plaintiff's properly pleaded complaint." Id. A federal question exists only when it is
15 presented by what is or should have been alleged in the complaint. See Holmes Group,
16 Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830 n. 2 (2002). The implication of
17 a federal question through issues raised by an answer or counterclaim does not suffice to
18 establish federal question jurisdiction. Id. at 831.

19 Defendants assert federal question subject matter jurisdiction under 28 U.S.C. §
20 1331 on the basis that their eviction would constitute disability discrimination. (Notice of
21 Removal at 1-2.) This assertion is without merit because Defendants cannot create federal
22 subject matter jurisdiction by adding claims or defenses to a notice of removal. McAtee v.
23 Capital One, F.S.B., 479 F.3d 1143, 1145 (9th Cir. 2007). Rather, the propriety of removal
24 is determined solely on the basis of the pleadings filed in state court, and the focus is on
25 "the complaint at the time the removal was filed." Libhart v. Santa Monica Dairy Co., 592
26 F.2d 1062, 1065 (9th Cir. 1979); see also California ex rel. Lockyer v. Dynegy, Inc., 375

1 F.3d 831, 838 (9th Cir. 2004) (the federal question "must be disclosed upon the face of the
2 complaint, unaided by the answer or by the petition for removal").

3 Case law unequivocally establishes that a state law claim for unlawful detainer does
4 not present a federal question. See, e.g., MFC Twin Builders, LLC v. Fajardo, 2012 WL
5 3862399, at *4 (E.D. Cal. Sep. 5, 2012); U.S. Bank Nat'l Ass'n v. Tyler, 2010 WL 4918790,
6 at *2 (N.D. Cal. Nov.12, 2010); OneWest Bank FSB v. Ignacio, 2010 WL 2696702, at *2
7 (E.D. Cal. July 6, 2010); IndyMac Fed. Bank, F.S.B. v. Ocampo, 2010 WL 234828, at *2
8 (C.D. Cal. Jan. 13, 2010); HSBC Bank, N.A. v. Bryant, 2009 WL 3787195, at *3 (S.D. Cal.
9 Nov. 10, 2009). The Complaint sets forth a single unlawful detainer claim. This is purely a
10 state law claim and there is no federal question jurisdiction.

11 **ORDER**

12 IT IS HEREBY ORDERED that this case be remanded to the San Bernardino County
13 Superior Court.

14 IT IS SO ORDERED.

15
16 DATED: 9/21/12

17 
18 _____
19 GEORGE H. KING
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28